

## **Schedule 1**

### **DISPUTE PROCEDURES**

### **FOR THE**

### **PUBLIC SERVICE**

### **CO-ORDINATING BARGAINING COUNCIL ('PSCBC')**

#### **A: APPLICATION**

#### **1. APPLICATION**

- 1.1 The parties agree to customise negotiation and dispute procedures for the Council.
- 1.2 All bargaining councils established in terms of the Act, may, in order to establish their own procedures, use this procedure. The procedures may be amended in accordance with the needs of that particular council.
- 1.3 These procedures apply to all disputes that arise within the public service in respect of those matters that <sup>1</sup>:
  - 1.3.1 are regulated by uniform rules, norms and standards that apply across the public service; or
  - 1.3.2 apply to terms and conditions of service that apply to two or more sectors; or
  - 1.3.3 are assigned to the State as employer in respect of the public service that are not assigned to the State as employer in any sector.
- 1.4 If there is a dispute that arises in a bargaining council in the public service that is not capable of being determined by that bargaining council as the employer in that council does not have the requisite

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<sup>1</sup> The following disputes are not dealt with by the Council but, must, in terms of the provisions of the Act, be dealt with by the CCMA:

- 1 disclosure of information - sections 16 and 89 of the Act;
- 2 organisational rights - chapter III part A of the Act
- 3 agency shop disputes - section 25 of the Act
- 4 closed shop disputes - sections 26 of the Act
- 5 interpretation or application of collective bargaining provisions - section 63(1) of the Act
- 6 picketing disputes - section 69
- 7 workplace forum disputes - section 86 and 94

authority to resolve the dispute, the dispute will be referred to the Council and these procedures will apply.

- 1.5 Individual rights disputes may not be dealt with by the Council but must be dealt with by the bargaining council that has the requisite authority. If a bargaining council does not have the authority to resolve the matter, these procedures may be employed by the Council.
- 1.6 Any jurisdictional dispute between the Council and a sectoral bargaining council as to whether these procedures or the sectoral councils procedure apply must be referred to the Dispute Resolution Committee established in terms of section 38(1) of the "*the Act*" for conciliation and arbitration.

## **B: DISPUTES OF INTERESTS**

### **2 NEGOTIATING PROCEDURE FOR PARTIES TO THE COUNCIL ON MATTERS OF MUTUAL INTEREST**

- 2.1 Any party to the Council may submit proposals for the conclusion of a collective agreement in the Council. These proposals must be submitted to the Secretary of the Council.
- 2.2 Within 7 days of the submission of the proposals the Secretary must serve copies of the proposals on the parties to the Council.
- 2.3 The Chairperson of the Council must call a meeting of the Executive Committee, within 10 days of the Secretary receiving the proposals.
- 2.4 The Executive Committee must set the agenda of the next meeting of the Council. Should the Executive Committee be of the view that some of the issues submitted to the Council should not be included on the agenda the matter will be referred to the Council for a decision. The Council will decide whether these issues must be included on the agenda, of whether to refer them to the relevant forum.
- 2.5 If a party does not agree with the decision of the Council with regard to the exclusion, or inclusion, of an item on the agenda of the Council, that party may refer the matter to the Dispute Resolution Committee established in terms of section 38 (1) of the *Act*.
- 2.6 At the first meeting of the Council, the Council must try to agree on a negotiation process which may include the following issues:

- (a) The submission of counter proposals;
  - (b) the establishment of a negotiating committee set up in terms of clause 9 of the Constitution of the Council;
  - (c) the appointment of a *conciliator*, if necessary, to facilitate the negotiations and chair the meetings; and
  - (d) the time table for negotiations.
- 2.7 In the event of the Council not agreeing a negotiating procedure, the parties must, within two days, commence negotiations.
- 2.8 If the parties do not conclude a collective agreement by the expiry of a 30 days after the matter was first included on the agenda of the Council, which period may be extended by agreement between the parties to the dispute, any party may declare a dispute.
- 2.9 Subject to clause 2.6, if a dispute is declared by any one of the parties the Secretary must appoint a *conciliator* and convene a dispute meeting which the *conciliator* must conciliate. If the dispute is not settled at that meeting, the conciliator must try to get agreement on:
- (a) further conciliation meetings to settle the dispute;
  - (b) the referral of the dispute to voluntary arbitration;
  - (c) if the dispute must be referred to arbitration, the appointment of the arbitrator.
- 2.10 If no collective agreements exist the conciliator must try to get agreement on:
- (a) the establishment of a minimum service in any essential service, if applicable;
  - (b) rules about the conduct of a strike or lockout; if applicable, and
  - (c) picketing rules, if applicable.
- 2.11 If the dispute is not settled, the parties to the dispute may exercise their rights in terms of the *Act*.
- 2.12 At least seven days notice must be given by any one of the parties to the Council to Council in the case of a lawful strike or lockout.
- 2.13 Any employee party who refers a dispute to the Council that concerns a unilateral change to terms and conditions of employment may, in the referral, and for the period referred to in paragraph 2.6:
- (a) require the employer not to implement unilaterally the change to terms and conditions of employment; or

- (b) if the employer has already implemented the change unilaterally, require the employer to restore the terms and conditions of employment that applied before the change; and
  - (c) the employer must comply with this requirement.
- 2.14 If the dispute must be referred to arbitration, the procedures contained in clause 6 apply.

### **3. PROCEDURE FOR OTHER MUTUAL INTEREST DISPUTES**

- 3.1 In this clause a dispute means any disputes of interest, other than one contemplated in clause 1 above, between the employer and a party to the Council or the employer and a non party to the Council, which concerns a matter of mutual interest contemplated in section 134 of the Act.
- 3.2 If there is a dispute about whether or not a the matter is a matter contemplated in section 134 of *the Act* the dispute must be referred to expedited arbitration in terms of clause 6 below; or
- 3.3 The procedures contained in clauses 6 and 7 apply to a dispute contemplated in this clause.
- 3.4 if the dispute is about a refusal to bargain, a party to the dispute may request the *conciliator* to issue an advisory award and the *conciliator* must issue the advisory award:
  - (a) within 14 days of the request; and
  - (b) before notice is given in terms of section 64(1) of the Act.
- 3.5 If the parties do not conclude a collective agreement by the expiry of the 30 day period, any party may declare a dispute. The Secretary must convene a dispute meeting that the *conciliator* must conciliate. If the dispute is not settled at that meeting, the conciliator must try to get agreement on:
  - (a) further conciliation meetings to settle the dispute;
  - (b) the referral of the dispute to voluntary arbitration;
  - (c) if the dispute must be referred to arbitration, the appointment of the arbitrator.
- 3.6 If no collective agreements exist the conciliator must try to get agreement on:
  - (a) the establishment of a minimum service in any essential service, if applicable;
  - (b) rules about the conduct of a strike or lockout; if applicable, and

- (c) picketing rules, if applicable.
- 3.7 If the dispute is not settled, the parties to the dispute may exercise their rights in terms of the *Act*.
- 3.8 At least seven days notice must be given by any one of the parties to the Council in the case of a lawful strike or lockout.
- 3.9 Any employee party who refers a dispute to the Council that concerns a unilateral change to terms and conditions of employment may, in the referral, and for the period referred to in paragraph 3.6:
  - (a) require the employer not to implement unilaterally the change to terms and conditions of employment;
  - (b) if the employer has already implemented the change unilaterally, require the employer to restore the terms and conditions of employment that applied before the change; and
  - (c) the employer must comply with this requirement.

## **C: DISPUTES OF RIGHT**

- 4.
  - 4.1 In this clause a dispute means any dispute, other than a mutual interest dispute contemplated in clauses 2 and 3, that must be referred to the Council for-
    - (a) conciliation or
    - (b) arbitration; <sup>2</sup>or
    - (c) conciliation and arbitration<sup>3</sup>
  - 4.2 If the dispute is one that is contemplated in terms of clause 4(1)(a), the conciliation procedure contained in paragraph 5 applies.
  - 4.3 If the dispute is one that is contemplated in terms of clause 4(1)(b), the procedure contained in paragraph 6 applies.
  - 4.4 If the dispute is one that is contemplated in terms of clause 4(1)(c), the following procedure applies:
    - (a) A party to a dispute may refer the dispute in writing to the Secretary.

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<sup>2</sup> Disputes concerning the interpretation and application of the constitution.

- (b) The party who refers the dispute must satisfy the Secretary that a copy of the referral has been served on all the other parties to the dispute.
- (c) If the Secretary is satisfied that the referral has been properly served, the Secretary must-
  - (i) appoint an arbitrator;
  - (ii) set the matter down for arbitration with 30 days of the referral;
  - (iii) appoint a conciliator; and
  - (iv) set the matter down for conciliation no later than 14 days before the arbitration.
- (d) The Secretary may appoint the same person to conciliate and arbitrate the dispute if that person is a member of both panels appointed in terms of clause 8.
- (e) The provision of clause 5.5 to 5.7 and 6.8 to 6.11 apply to disputes contemplated in this sub-clause

## **C: CONCILIATION & ARBITRATION PROCEDURES**

### **5. CONCILIATION BY THE COUNCIL**

- 5.1 A party to a dispute may refer a dispute in writing to the Secretary of the Council.
- 5.2 The party who refers a dispute to the Council must satisfy the Secretary that a copy of the referral has been served on all the other parties to the dispute.
- 5.3 If the Secretary is satisfied that the referral has been properly served, the Secretary must:
  - (a) appoint a *conciliator* to attempt to resolve the dispute through conciliation within 30 days of the date of the referral;
  - (b) decide the date, time and venue of the conciliation meeting; and
  - (c) notify the parties to the dispute of these details.
- 5.4 If the parties to a dispute have agreed on a particular *conciliator*, the Secretary must appoint the person agreed upon if that person is available to conciliate disputes within the 30 day period or any agreed period. If the parties do not agree upon a conciliator the Secretary shall appoint the conciliator.
- 5.5 The *conciliator* appointed to conciliate the dispute must determine the process to attempt to resolve the dispute which may include-

- (a) mediating the dispute;
  - (b) conducting a fact-finding exercise;
  - (c) making a recommendation to the parties, which may be in the form of an advisory award; and
  - (d) arbitrating the dispute immediately if the parties request the *conciliator* to do so.
- 5.6 In the conciliation proceedings a party to the dispute may appear in person or be represented only by a member, an office bearer or official of that party's trade union or by an employee of any national department or provincial administration.
- 5.7 If a party to the dispute fails to appear in person or to be represented at the conciliation, the *conciliator* may-
- (a) dismiss the matter; or
  - (b) continue with the conciliation in the absence of the party; or
  - (c) adjourn the conciliation to a later date.

## 6. ARBITRATIONS BY THE COUNCIL

- 6.1 A party to a dispute may refer the dispute in writing to the Secretary.
- 6.2 The party who refers a dispute to the Council must satisfy the Secretary that a copy of the referral has been served on all the other parties to the disputes.
- 6.3 If the parties to a dispute have agreed on *three arbitrators*, the Secretary must appoint the persons agreed upon.
- 6.4 Should the parties not agree upon the three *arbitrators*, the Secretary shall appoint those *arbitrators*.
- 6.5 If the Secretary is satisfied that the referral has been properly served the Secretary must appoint *three arbitrators* to arbitrate the dispute.
- 6.6 *The three arbitrators* may, should it be agreed upon by all the parties to the dispute, attempt to resolve the dispute through conciliation.
- 6.7 The Secretary must decide the date, time and venue of the arbitration hearing meeting and must notify the parties to the dispute of these details.

- 6.8 The three *arbitrators* appointed to arbitrate in the dispute must determine the procedure to be followed in the arbitration in order to resolve the dispute as fairly and quickly as possible, but must deal with the merits of the dispute with a minimum of legal formalities. The procedure must be in accordance with the rules of natural justice.
- 6.9 In any arbitration proceedings, a party to the dispute may appear in person or be represented only by a legal practitioner, a member, office bearer or official of that party's trade union or an employee of a national department or a provincial administration.
- 6.10 If the party to the dispute fails to appear in person or to be represented at the arbitration proceedings the three *arbitrators* may-
- (a) dismiss the matter; or
  - (b) continue with the arbitration proceedings in the absence of the party; or
  - (c) adjourn the arbitration proceedings to a later date.
- 6.11 Within 14 days of the conclusion of the arbitration proceedings-
- (a) the three *arbitrators* must issue an arbitration award with reasons signed by all the *arbitrators*;
  - (b) the Secretary must serve a copy of the award on each party to the dispute or to the person who represented a party in the arbitration proceedings.
- 6.12 On good cause shown, the Secretary may extend the period within which the arbitration award and the reasons are to be filed.

## **7. COSTS**

- 7.1 The Council will pay the costs of the arbitrators and conciliators in the proceedings. Each party to the dispute must pay its own costs with regard to travelling, meals, legal representation (if applicable) and other related expenses.
- 7.2 If at the conclusion of an arbitration, the *arbitrators* are satisfied that the referral to arbitration was made vexatiously or without reasonable cause, the *arbitrators* may, on application by either party, make an appropriate order for costs against the referring party including the costs of the *arbitration*.
- 7.3 Costs awarded by the *arbitrators* may include-
- (a) the costs of the arbitration;



- (b) legal and professional costs and disbursements;
- (c) other expenses which a party has incurred in the conduct of the dispute; and
- (d) expenses of witnesses.

## **8. PANELS OF *CONCILIATORS* AND *ARBITRATORS***

- 8.1 At its annual general meeting the Council must appoint, from nominations received from the parties, for a period of one year-
- (a) a panel of *conciliators* to conciliate disputes;
  - (b) a panel of *arbitrators* to arbitrate disputes.
- 8.2 In making such appointment the Council must ensure that the panels-
- (a) are drawn from each of the nine (9) provinces having regard to the anticipated number of disputes that are likely to arise in each province and the number of employees employed in national and provincial departments in the various provinces;
  - (b) have skill and experience in labour relations, knowledge about the public service and knowledge or experience in conciliation and/or arbitration;
  - (c) are broadly representative of South African society.
- 8.3 All *conciliators* and *arbitrators* will conduct themselves in accordance with the Code of Conduct in Annexure "A".
- 8.4 The Council may remove a member of the panels from office-
- (a) because of serious misconduct;
  - (b) because of incapacity;
  - (c) by a decision of the Council.
- 8.5 If for any reason there is a vacancy in a panel, the Council may appoint a new member to the relevant panel for the unexpired term of office.
- 8.6 A member of the panel, whose term of office expires, will be eligible for re-appointment.
- 8.7 If the parties are unable to agree on an appointment to a vacancy, the matter must be referred to the Director of the CCMA, who in consultation with the Minister for Public Service and Administration must appoint a suitably qualified person to fill the vacancy.

## **9. TIME PERIODS AND CONDONATION**

- 9.1 Any late application may be condoned by a committee of the Council, established for this purpose, on good cause shown.

- 9.2 Notwithstanding the time periods stipulated in this agreement, the parties may agree to longer time periods for the resolution of any dispute.

## 10 DEFINITIONS

- 10.1 Any expression used in this procedure which is defined in the Labour Relations Act, 1995 (Act no 55 of 1995) and the constitution of the Council has the same meaning as in the Act and the constitution.
- 10.2 “*Conciliator*” means a *conciliator* appointed by the Council in terms of clause 7 above.
- 10.3 “*Arbitrator*” means an *arbitrator* appointed by the Council in terms of clause 7 above.
- 10.4 “*dispute*” means a *dispute* that exists in respect of:
- 10.4.1 matters that are regulated by uniform rules, norms and standards that apply across the public service; or
  - 10.4.2 matters that apply to terms and conditions of service that apply to two or more sectors; or
  - 10.4.3 matters that are assigned to the State as employer in respect of the public service that are not assigned to the State as employer in any sector.

## ANNEXURE 'A'

### CODE OF CONDUCT FOR CONCILIATORS AND ARBITRATORS

#### 1. PURPOSE

The purpose of this code is to:

- 1.1 assist in maintaining the good repute of the conciliation, mediation and arbitration processes
- 1.2 provide guidance to all *conciliators and arbitrators* on matters of professional conduct and practice generally.

#### 2. GENERAL ATTRIBUTES OF *CONCILIATORS AND ARBITRATORS*

In order for conciliation, mediation and arbitration processes to be seen to be fair and just, *conciliators and arbitrators* shall:

- 2.1 act with honesty, impartiality, due diligence and independent of any outside pressure in the discharge of their functions;
- 2.2 conduct themselves in a manner that is fair to all parties and shall not be swayed by fear of criticism or by self-interest;
- 2.3 not solicit appointment for themselves. This shall not however preclude *conciliators and arbitrators* from indicating a willingness to serve in any capacity;
- 2.4 accept appointments only if they believe that they are available to conduct the process promptly and are competent to undertake the assignment;
- 2.5 avoid entering into any financial, business or social relationship which is likely to affect their impartiality or which might reasonably create a perception of partiality or bias;
- 2.6 not influence any of the parties in disputes by improper means, including gifts or other inducements;
- 2.7 support sound labour relations in the public service.

#### 3. CONFLICT OF INTEREST AND DISCLOSURE

- 3.1 *Conciliators and arbitrators* should disclose any interest or relationship that is likely to affect their impartiality or which might create a perception of partiality. The duty to disclose rests on the *conciliators and arbitrators*.

- 3.2 *Conciliators and arbitrators* appointed to intervene in any matter should, before accepting, disclose this to the Secretary of the Council:
- 3.2.1 any direct or indirect financial or personal interest in the matter;
  - 3.2.2 any existing or past financial, business, professional, family or social relationship which is likely to affect impartiality or may lead to a reasonable perception of partiality or bias;
  - 3.2.3 if the circumstances requiring disclosure are unknown to *conciliators and arbitrators* prior to accepting appointments, disclosure must be made when such circumstances become known to the *conciliators and arbitrators*. The disclosure in this regard could in arbitration proceedings, include witnesses who may have a relationship with the *conciliators and arbitrators*;
  - 3.2.4 after appropriate disclosure *conciliators and arbitrators* may serve if both parties so desire but should withdraw if they believe that a conflict of interest exists irrespective of the view expressed by the parties;
  - 3.2.5 in the event where there is no consensus on whether *conciliators and arbitrators* should withdraw or not, *conciliators and arbitrators* should not withdraw if the following circumstances exist:
    - if the terms of reference provide for a procedure to be followed for determining challenges to the *conciliators and arbitrators* then those procedures should be followed;
    - if *conciliators and arbitrators*, after carefully considering the matter, determine that the reason for the challenge is not substantial and that they can nevertheless act impartially and fairly, and that the withdrawal would cause unfair delay or would be contrary to the ends of justice.

#### 4. HEARING CONDUCT

- 4.1 *Conciliators and arbitrators* should conduct proceedings fairly, diligently and in an even-handed manner.
- 4.2 *Conciliators and arbitrators* should have no casual contact with any of the parties or their representatives while handling a matter without the presence or consent of the other.
- 4.3 *Conciliators and arbitrators* should be patient and courteous to the parties and their representatives or witnesses and should encourage similar behaviour by all participants in the proceedings.
- 4.4 Agreements by the parties for the use of mechanical recording should be respected by *arbitrators*.

- 4.5 In determining whether to conduct an *ex parte* hearing, an *arbitrator* must consider the relevant legal, contractual and other pertinent circumstances.
- 4.6 A *conciliator or arbitrator* must be satisfied before proceeding *ex parte* that a party refusing or failing to attend the hearing has been given adequate notice of the time, place and purpose of the hearing.
- 4.7 In an event of more than one *conciliator or arbitrator* acting as either a conciliator, mediator or arbitrator, the *conciliator or arbitrator* should afford each other a full opportunity to participate in the proceedings.
- 4.8 *Conciliators and arbitrators* should not delegate their duty to intervene in any matter to any other person without prior notice to and the consent of the Secretary of the Council.

## **5. POST-HEARING**

- 5.1 *Arbitrators* should not disclose a prospective award to either party prior to its simultaneous issuance to both parties.
- 5.2 *Arbitrators'* awards should be definite, certain and as concise as possible.
- 5.3 No clarification or interpretation of an award is permissible without the consent of both parties.
- 5.4 Under agreements which permit or require clarification or interpretation of an award, *arbitrators* shall afford each party an opportunity to be heard.

## **6. CONFIDENTIALITY**

Information disclosed to *conciliators* in confidence by a party during the course of conciliation, should be kept by *conciliators* in the strictest confidence and should not be disclosed to the other party or to third parties unless authority is obtained for such disclosure.

## **7. JURISDICTION**

- 7.1 *Conciliators and arbitrators* must observe faithfully both the limitation and inclusions of the jurisdiction conferred by an agreement or by statute under which they serve.
- 7.2 A direct settlement by the parties of some or all issues in a case, at any stage of the proceedings, must be accepted by *conciliators and arbitrators* as relieving him or her of further jurisdiction in respect of such issues.

## **8. RELIANCE ON OTHER ARBITRATORS' AWARDS AND INDEPENDENT RESEARCH**

*Conciliators and arbitrators* issuing advisory or binding awards may have regard to other arbitrators' awards, decided cases or independent research but must assume full and unimpaired responsibility in each matter for the decision reached.

## **9. AVOIDANCE OF DELAYS**

- 9.1 *Conciliators and arbitrators* have the duty to plan their work schedules in a manner that ensures that commitments to the Council are fulfilled timeously.
- 9.2 *Conciliators and arbitrators* should co-operate with the parties and the Council to avoid delays.
- 9.3 On completion of a hearing, *arbitrators* must adhere to the time limits for issuing an award.

## **10. FEES AND EXPENSES**

- 10.1 *Conciliators and arbitrators* should be governed by the fee structure of the Council and should not enter into any arrangement with the parties regarding fees.
- 10.2 *Conciliators and arbitrators* must maintain adequate records to support charges for services and expenses and must account timeously to the Council.

## **11. COMPETENCY**

*Conciliators and arbitrators* should decline appointment, withdraw or request technical assistance when they decide that a matter is beyond their competence.